

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DEX MEDIA WEST, INC.; SUPERMEDIA
LLC; and YELLOW PAGES
INTEGRATED MEDIA ASSOCIATION
d/b/a YELLOW PAGES ASSOCIATION,

Plaintiffs,

v.

CITY OF SEATTLE and RAY HOFFMAN,
in his official capacity as Director of Seattle
Public Utilities,

Defendants.

No. 10-cv-1857

DECLARATION OF
KIMBALL MULLINS

Kimball Mullins declares:

1. I am a paralegal at Perkins Coie working on the above-captioned case. I am
competent to make this declaration and do so on personal knowledge as indicated.

2. Attached as Exhibit A is a true and correct copy of Seattle Ordinance 123427.

3. Attached as Exhibit B is a true and correct copy of a blog posting by Seattle City
Councilmember Mike O'Brien to the Product Stewardship Institute's blog. Mike O'Brien, *A
Yellow Pages Opt Out System for Seattle*, PROD. STEWARDSHIP INST'S. BLOG (Nov. 4, 2010),
[http://productstewardshipinstitute.wordpress.com/2010/11/04/a-yellow-pages-opt-out-system-
for-seattle/](http://productstewardshipinstitute.wordpress.com/2010/11/04/a-yellow-pages-opt-out-system-for-seattle/).

DECLARATION OF KIMBALL MULLINS (No. 10-
cv-1857) – 1

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

1 4. Attached as Exhibit C is a true and correct copy of a news story by a local
2 reporter. Riya Bhattacharjee, *Non-Profits, Business Groups Oppose Yellow Pages Opt-Out Bill*,
3 SLOG, Oct. 5, 2010, [http://slog.thestranger.com/slog/archives/2010/10/05/non-profits-business-](http://slog.thestranger.com/slog/archives/2010/10/05/non-profits-business-groups-oppose-yellow-pages-opt-out-bill)
4 [groups-oppose-yellow-pages-opt-out-bill](http://slog.thestranger.com/slog/archives/2010/10/05/non-profits-business-groups-oppose-yellow-pages-opt-out-bill).
5
6

7
8
9 5. Attached as Exhibit D is a true and correct copy of a news story by a local
10 reporter. Riya Bhattacharjee, *After Tweaks for Local Interests, City Council Set to Pass Yellow*
11 *Pages Bill*, SLOG, Oct. 11, 2010, [http://slog.thestranger.com/slog/archives/2010/10/11/after-](http://slog.thestranger.com/slog/archives/2010/10/11/after-tweaks-for-local-interests-city-council-set-to-pass-yellow-pages-bill)
12 [tweaks-for-local-interests-city-council-set-to-pass-yellow-pages-bill](http://slog.thestranger.com/slog/archives/2010/10/11/after-tweaks-for-local-interests-city-council-set-to-pass-yellow-pages-bill).
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16
17 6. On December 30, 2010, the Seattle City Attorney's Office produced a compact
18 disc containing 990 pages of documents. Relevant excerpts of these documents are attached as
19 Exhibits E, F, G, H, I, J, K, and L. The figures shown in Exhibit L are preliminary estimates of
20 different categories of recycled materials for 2010. A 2005 study, excerpts of which are attached
21 as Exhibit M, found that directories comprised 2.7% of the waste recycled in Seattle, newspapers
22 comprised 33%, and mixed low grade paper comprised 23.9%.
23
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25
26
27 7. Page 1 of Exhibit A reflects that on October 4, 2010, the City Council voted to
28 postpone consideration of Ordinance 123427 for one week.
29
30

31
32 8. The City of Seattle posts video recordings of its meetings online at
33 <http://www.seattlechannel.org>. I have reviewed and transcribed portions of a number of these
34 meetings relevant to the ordinance at issue in this case.
35
36

37
38
39 9. In a meeting of the full City Council on October 4, 2010, from 124:12-124:48 of
40 the video available here, <http://www.seattlechannel.org/videos/video.asp?ID=2021078>, Seattle
41 City Councilmember Mike O'Brien said: "I did not specifically try to define 'distribution.' I
42 really was relying heavily on the Law Department to craft a bill that, um, you know . . . we
43 recognize that there will be legal challenges about the First Amendment and commercial free
44 speech, and so I relied on the expertise of other folks to make sure that we crafted it in a way that
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1 makes the most sense to avoid the unintended consequences where possible and to achieve the
 2 primary objectives and withstand challenges.”
 3

4 10. In the same meeting, from 110:10-110:15 of the video available here,
 5
 6 <http://www.seattlechannel.org/videos/video.asp?ID=2021078>, Seattle City Councilmember Sally
 7
 8 Clark states that she opted out of delivery of a yellow pages directory and did not receive one
 9 during the subsequent delivery.
 10

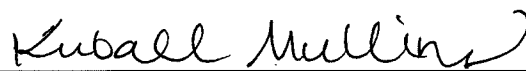
11 11. In a meeting of the Seattle City Council's Seattle Public Utilities &
 12
 13 Neighborhoods Committee on June 22, 2010, from 48:39-48:49 of the video available here,
 14
 15 <http://www.seattlechannel.org/videos/video.asp?ID=2331037>, Seattle Public Utilities staff
 16
 17 member Dick Lilly testifies that yellowpagesoptout.com, run by Plaintiff the Yellow Pages
 18 Association, “works pretty well.”
 19

20 12. In a meeting of the Seattle City Council's Seattle Public Utilities &
 21
 22 Neighborhoods Committee on September 14, 2010, from 24:34-24:41 of the video available
 23 here, <http://www.seattlechannel.org/videos/video.asp?ID=2331057>, Seattle City Councilmember
 24
 25 Mike O'Brien says: “[I]f every single city in the nation decided to create their own system, that
 26
 27 would be quite burdensome on the industry.”
 28

29 13. In a meeting of the Seattle City Council's Seattle Public Utilities &
 30
 31 Neighborhoods Committee on August 10, 2010, from 58:10-58:18 of the video available here,
 32
 33 <http://www.seattlechannel.org/videos/video.asp?ID=2331049>, Seattle City Councilmember Mike
 34
 35 O'Brien says: “If 50 cities around the country came up with different self-managed systems, that
 36
 37 clearly would create a significant burden on [the industry].”
 38

39 **I declare under penalty of perjury that the foregoing is true and correct.**
 40

41 EXECUTED this 12th day of January, 2011.
 42

43 
 44

45 Kimball Mullins
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 48
 49
 50
 51

CERTIFICATE OF SERVICE

On January 13, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorneys of record:

Gregory C. Narver
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Attorneys for Defendants The City of
Seattle and Ray Hoffman

Attorney for Defendants The City of Seattle
and Ray Hoffman

I certify under penalty of perjury that the foregoing is true and correct.

DATED this 13th day of January, 2011.

s/ David J. Burman

David J. Burman WSBA No. 10611

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*Attorney for Plaintiffs Dex Media West, Inc.,
SuperMedia LLC, and Yellow Pages Integrated
Media Association d/b/a Yellow Pages
Association*

EXHIBIT A

Ordinance No. 123427Council Bill No. 110964

AN ORDINANCE relating to solid waste reduction; establishing license requirements for publishers of yellow pages phone books; establishing an opt-out registry and a recovery fee for yellow pages phone books, and amending the Seattle Municipal Code by creating a new Chapter 6.255.

The City of Seattle – Legislative Department

Council Bill/Ordinance sponsored by: Wald

Committee Action:

Date	Recommendation	Vote
9/28/10	Substitute Version B	Yes: 10-5, No: 0, PC
	Vote on Version B	Yes: 10-5, No: 0, PC

Related Legislation File:

Date Introduced and Referred: <u>Sept. 7, 2010</u>	To: <u>Seattle Public Utilities and Neighborhoods</u>
Date Re-referred:	To (Committee):
Date Re-referred:	To (Committee):
Date of Final Action: <u>Oct. 11, 2010</u>	Date Presented to Mayor: <u>Oct. 12, 2010</u>
Date Signed by Mayor: <u>Oct. 14, 2010</u>	Date Returned to City Clerk: <u>Oct. 16, 2010</u>
Published by Title Only <input checked="" type="checkbox"/>	Date Vetted by Mayor:
Published in Full Text <input checked="" type="checkbox"/>	Date Vetted by Mayor:
Date Veto Published:	Date Passed Over Veto:
Date Veto Sustained:	Date Returned Without Signature:

This file is complete and ready for presentation to Full Council.

Full Council Action:

Date	Decision	Vote
10-9-10	Held	5-4 NO YES PC
10-11-10	Passed	8-1
	as amended	NO
		Goddard
		@un

Mike O'Brien/SF
 Yellow Pages Ord.
 October 8, 2010
 Version 14

ORDINANCE

123427

AN ORDINANCE relating to solid waste reduction; establishing license requirements for publishers of yellow pages phone books; establishing an opt-out registry and a recovery fee for yellow pages phone books, and amending the Seattle Municipal Code by creating a new Chapter 6.255.

WHEREAS, the Washington State Legislature in RCW 70.95.010(8)(a) established waste reduction as the first priority for the collection, handling, and management of solid waste; and

WHEREAS, the Washington State Legislature in RCW 70.95.010(4) found that it is "necessary to change manufacturing and purchasing practices and waste generation behaviors to reduce the amount of waste that becomes a governmental responsibility"; and

WHEREAS, the Washington State Legislature in RCW 70.95.010(6)(c) found that it is the responsibility of county and city governments "to assume primary responsibility for solid waste management and to develop and implement aggressive and effective waste reduction and source separation strategies"; and

WHEREAS, in 2007 the City Council adopted, the Mayor concurring, Resolution 30990, which reaffirmed the City's 60% recycling goal and set a longer-term goal of 70% recycling along with targets for waste reduction; and

WHEREAS, Resolution 30990 called for studies on how to reduce Seattleites' use of hard-to-recycle materials; and

WHEREAS, costs associated with the collection and disposal of yellow pages phone books in Seattle creates burdens on the City's solid waste disposal system; and

WHEREAS, to protect the privacy of the City's residents and businesses from unwanted intrusions, it is necessary to regulate the distribution of yellow pages phone books and provide an effective mechanism for the City's residents and businesses to opt-out of receiving yellow pages phone books; and

WHEREAS, to recover the costs of collection and disposal of yellow pages phone books and the costs of an Opt-Out Registry, it is necessary to impose a solid waste recovery fee on the distribution of yellow pages phone books; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Effective January 1, 2011, a new Chapter is added to Title 6, Subtitle IV, of



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 October 8, 2010
 Version 14

the Seattle Municipal Code to read as follows:

Chapter 6.255 Distributors of Yellow Pages Phone Books.

SMC 6.255.010 Purpose.

The purpose of this chapter is to establish a yellow pages phone book distributor license for persons engaged in the business of distributing yellow pages phone books in the City, to require such licensees to provide the City with timely and accurate data on the quantities of yellow pages phone books they distribute in the City, to impose a recovery fee on the distribution of yellow pages phone books in the City, to establish a registry for residents and businesses to opt-out of receiving yellow pages phone books, and to require licensees to refrain from distributing yellow pages phone books to residents and businesses who have notified the registry that they do not want to receive yellow pages phone books.

SMC 6.255.025 Definitions.

For purposes of this chapter:

A. "Display advertising" means business advertising that includes text and/or various graphic elements exceeding the use of bold face type and color highlighting of the business name and telephone number.

B. "Distribution" means the unsolicited delivery of more than four tons annually of yellow pages phone books to the addresses of residents and businesses within the City, but does not include the delivery of yellow pages phone books by membership organizations to their members or to other residents or businesses requesting or expressly accepting delivery.



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Yellow Pages Ord.
October 8, 2010
Version 14

1 C. "Membership organization" means an organization that is organized and operated
2 primarily or exclusively for the purpose of providing services or benefits to a designated group
3 of members (identified, for example, by having to pay membership dues or participating in
4 membership events).

5
6 D. "Distributor" means a person or organization engaged in the business of arranging for
7 the distribution of yellow pages phone books in the City; the term is intended to cover those
8 persons or organizations who are primarily responsible for arranging for the publication and
9 distribution of the yellow pages phone books and whose income is derived, at least in part, from
10 the advertising contained in the yellow pages phone books. The term "distributor" is not
11 intended to include those individuals whose role in the distribution of yellow pages phone books
12 in the City is limited to driving the streets and making physical delivery of the yellow pages
13 phone books.
14

15
16 E. "Yellow pages phone book" means a publication that consists primarily of a listing of
17 business names and telephone numbers and contains display advertising for at least some of
18 those businesses (commonly, but not necessarily, printed on yellow paper).
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21

22 **SMC 6.255.030 License – Required.**

23 A. Commencing April 1, 2011, it shall be unlawful for any person to engage in business
24 as a distributor of yellow pages phone books in the City without first obtaining an annual yellow
25 pages phone book distributor license issued in accordance with the provisions of the new license
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Yellow Pages Ord.
October 8, 2010
Version 14

code. The annual license is required regardless of where publication takes place or the location of the business's offices, storage or transshipment facilities.

B. The license required pursuant to this chapter is separate from and in addition to any license required by any other chapter of the Seattle Municipal Code, including but not limited to the business license required pursuant to chapter 5.55.

SMC 6.255.035 License – Required, Exceptions.

Local exchange companies whose distribution of phone books in the City is limited to only those phone books required by WAC 480-120-251 are not subject to the requirements of this chapter.

SMC 6.255.040 License – Expiration Date.

Yellow pages phone book distributor licenses expire annually on March 31st.

SMC 6.255.050 License – Application.

Application for the yellow pages phone book distributor license shall be on forms specified by the Director, and shall be accompanied by the license fee established by section 6.255.060, the annual report form required by section 6.255.080, and any recovery fees required by section 6.255.100.



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Yellow Pages Ord.
October 8, 2010
Version 14

SMC 6.255.060 License – Fee.

The annual license fee for the yellow pages phone book distributor license is One Hundred Dollars (\$100.00).

SMC 6.255.070 License -- Not Transferable.

No license issued pursuant to this chapter shall be transferable unless in accordance with the provisions of chapter 6.202.

SMC 6.255.080 Annual Reports.

A. Every person submitting an application for a yellow pages phone book distributor license shall include with the application an accurately completed report form describing the quantities of yellow pages phone books the license applicant distributed within the City during the previous calendar year.

B. Every person submitting an application for renewal of an existing license under this chapter shall submit to the City before March 31st an accurately completed report form describing the quantities of yellow pages phone books the license applicant distributed within the City during the previous calendar year. The Director of Seattle Public Utilities shall specify the information to be included in the report form, which must include at a minimum the number and weight of yellow pages phone books distributed.

C. Annual report forms shall be provided by the City and distributed to all existing licensees in conjunction with applications for license renewals.



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Yellow Pages Ord.
October 8, 2010
Version 14

1 D. Failure to submit a complete and accurate annual report form shall be grounds for the
2 denial of a license application.

3 E. Failure to submit a complete and accurate annual report form and the submission of a
4 materially inaccurate annual report form are each violations of this chapter.

5
6 **SMC 6.255.090 Opt-Out Registry.**

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8 A. The Director of Seattle Public Utilities is authorized and directed to establish the
9 City's Opt-Out Registry to serve as a clearinghouse for residents and businesses to register and
10 indicate their desire not to receive delivery of some or all yellow pages phone books. The
11 registry shall maintain a list of the addresses of all residents and businesses who have indicated
12 their desire not to receive delivery of yellow pages phone books. The registry shall be
13 conveniently accessible to all residents and businesses and provide for notification by mail,
14 telephone, email, and online registration. The addresses of those residents and businesses who
15 have registered with the City's Opt-Out Registry indicating their desire not to receive delivery of
16 yellow pages phone books shall remain on the registry until such time as the resident or business
17 moves or notifies the registry of their desire to be removed.
18

19
20 B. The Director of Seattle Public Utilities or designee shall make available to all licensed
21 distributors the addresses of all residents and businesses who have registered with the City's Opt-
22 Out Registry indicating their desire not to receive delivery of yellow pages phone books.
23 Licensed distributors shall provide the City's Opt-Out Registry with accurate and current contact
24 information, including address and phone number, and shall provide the City's Opt-Out Registry
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Yellow Pages Ord.
October 8, 2010
Version 14

1 on a routine basis with the addresses of all residents and businesses who have notified the
2 distributor directly of their desire not to receive delivery of yellow pages phone books.

3 C. No more than 30 days prior to distributing any yellow pages phone books within the
4 City, distributors shall download the addresses of those residents and businesses who have
5 registered with the City's Opt-Out Registry indicating their desire not to receive delivery of
6 yellow pages phone books.
7

8 D. Distributors shall not make delivery of yellow pages phone books to the address of
9 any resident or business who registered with the City's Opt-Out Registry, prior to 30 days before
10 the date of delivery, indicating their desire not to receive delivery of yellow pages phone books.
11

12 E. The Director of Seattle Public Utilities is directed to issue an annual report to the City
13 Council in 2011, 2012, and 2013, evaluating the operation and impact of the City's Opt-Out
14 Registry. The Director will identify needed improvements, concerns expressed by residents or
15 businesses, and make recommendations for changing or enhancing the program.
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19 **SMC 6.255.100 Recovery Fee.**

20 A. A recovery fee is hereby imposed on the distribution of yellow pages phone books
21 within the City to be calculated as follows: Fourteen Cents (\$0.14) for each yellow pages phone
22 book distributed within the City plus One Hundred Forty-Eight Dollars (\$148.00) per ton of
23 yellow pages phone books distributed within the City. The recovery fee is intended to reflect the
24 cost to the City of administering the Opt-Out Registry and collecting and recycling yellow pages
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Yellow Pages Ord.
October 8, 2010
Version 14

1 phone books. The Director of Seattle Public Utilities may recommend adjustments to the
2 recovery fee as part of the development of adjustments to the solid waste rates.

3 B. Annually and as otherwise may be required by the Director, based on the quantities
4 reported under section 6.255.080, distributors shall report and remit payment of the recovery fees
5 imposed under this section to the Director. Payments shall be reported on forms prescribed by
6 the Director. The form shall be signed by a responsible officer or agent of the distributor. The
7 individual signing the form shall swear or affirm that the information in the form is true and
8 correct.
9

10 C. City revenue generated from the recovery fee imposed under this section shall be
11 deposited in the Solid Waste Fund.
12

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15 **SMC 6.255.110 Distribution Requirements.**

16 A. Distributors shall prominently and conspicuously display on a portion of the front
17 cover of each yellow pages phone book distributed within the City the telephone number,
18 website and mailing address, in a format specified by the Director of Seattle Public Utilities, that
19 residents and businesses may use to notify the City's Opt-Out Registry of their desire not to
20 receive delivery of yellow pages phone books.
21

22 B. Distributors shall also prominently and conspicuously display on their websites a link
23 to the City's Opt-Out Registry together with information regarding the process for residents and
24 businesses to opt-out of receiving delivery of yellow pages phone books.
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Yellow Pages Ord.
October 8, 2010
Version 14

1 C. Distributors shall retain the list of opt-out addresses from the City opt-out registry that
2 was used at the time of delivery. This list shall be made available to the Director upon request
3 for purposes of investigation or appeal.

4
5 D. The content of all yellow pages phone books, and any materials included therewith,
6 distributed within the City shall be recyclable.

7
8 **SMC 6.255.120 Duty of licensee.**

9 It shall be the duty of all persons licensed under this chapter to comply with all applicable
10 provisions of the new license code. Failure of any licensee to do so shall be a violation of this
11 chapter.
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13
14 **SMC 6.255.130 Denial, Suspension or Revocation.**

15 The Director may deny, suspend or revoke any license issued under this chapter, in
16 accordance with the provisions of chapter 6.202. Failure of a licensee to comply with any
17 provision of this chapter is sufficient grounds for the denial, suspension or revocation of the
18 license. A license suspended or revoked may not be reinstated without prior payment of all
19 outstanding fees and penalties.
20

21
22 **SMC 6.255.140 Civil Penalty.**

23 A. Any person who fails to comply with any provision of this chapter shall be subject to
24 a maximum civil penalty in the amount of One Hundred Twenty-Five Dollars (\$125.00) per
25 violation.
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Yellow Pages Ord.
October 8, 2010
Version 14

1 B. The City Attorney is authorized to initiate legal action to enforce this chapter as
2 deemed necessary and appropriate.

3
4 **SMC 6.255.150 Severability.**

5 Should any section, subsection, paragraph, sentence, clause or phrase of this chapter be
6 declared unconstitutional or invalid for any reason, such decision shall not affect the validity of
7 the remaining portions of this chapter.
8

9 Section 2. The Director of Seattle Public Utilities shall assist the Director of Finance and
10 Administrative Services in the administration of this chapter. The Director of Finance and
11 Administrative Services shall have administrative responsibility for all typical and usual
12 licensing procedures for the yellow pages phone book distributor license, including but not
13 limited to maintaining a database of licensees and mailing applications for license renewals. The
14 Director of Seattle Public Utilities shall be responsible for the review and analysis of the annual
15 reports required by this chapter and for recommending that enforcement action be taken when
16 licensees fail to submit timely, complete and accurate annual reports or license applications or
17 otherwise fail to comply with the requirements of this chapter. The Director of Seattle Public
18 Utilities is authorized to adopt, in accordance with the provisions of the Administrative Code,
19 rules relating to the administration of this chapter, including but not limited to reporting
20 requirements, the opt-out registry, and the recovery fee established under this chapter. By
21 December 31, 2010, the Director of Finance and Administrative Services and the Director of
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Mike O'Brien/SF
Yellow Pages Ord.
October 8, 2010
Version 14

1 Seattle Public Utilities shall develop an interdepartmental Memorandum of Agreement further
2 defining their respective roles in the administration of this chapter.

3 Section 3. The Director of Seattle Public Utilities is authorized to adopt, in accordance
4 with the provisions of the Administrative Code, rules specifying the criteria and procedures to
5 govern the process of granting exemptions under this section. A distributor may be exempted
6 from the requirements of SMC 6.255.090 (Opt-Out Registry), SMC 6.255.100 (Recovery Fee),
7 and SMC 6.255.110 A and B (Distribution Requirements) if the distributor can demonstrate to
8 the satisfaction of the Director of Seattle Public Utilities that it has established an effective
9 program to ensure delivery of yellow pages phone books to only those residents and businesses
10 who affirmatively request to receive delivery of yellow pages phone books.
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14 Section 4. The provisions of this ordinance are declared to be separate and severable. If
15 a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having
16 run, finds any provision of this ordinance to be invalid or unenforceable as to any person or
17 circumstance, such offending provision shall, if feasible, be deemed to be modified to be within
18 the limits of enforceability or validity. However, if the offending provision cannot be so
19 modified, it shall be null and void with respect to the particular person or circumstance, and all
20 other provisions of this ordinance in all other respects, and the offending provision with respect
21 to all other persons and all other circumstances, shall remain valid and enforceable.
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EXHIBIT B

A Yellow Pages Opt Out System for Seattle

November 4, 2010

tags: Product Stewardship, Zero Waste, life-cycle, Product Stewardship Institute, Phone Book, Yellow Pages, Seattle, Opt Out, Council Bill 116954, solid waste, Mike O'Brien, producer responsibility, Superpages, Seattle City Council, paper

by Seattle City Councilmember Mike O'Brien



On Monday, Oct 4th my colleagues and I on the Seattle City Council passed Council Bill 116954 establishing an opt-out system for yellow pages phone books in Seattle.

Before I get into the details of the ordinance, I want to talk about scale. The challenges we face in our waste stream are massive – Seattle still sends a mile-long train of garbage to the landfill nearly every day. Yellow pages directories are one of many products filling our garbage and recycling bins, and we know even if Seattle successfully eliminates 50% of the yellow pages delivered in the city that is merely a drop in the bucket. I see two ways to scale our opt-out system up in a way that will transform today's modest effort into something much more significant. I hope those of you reading this blog will help.

The first is expanding the geographic scale. Seattle will model a system that other jurisdictions can easily replicate by contracting with a third party vendor to build an opt-out list that other cities and states can easily join. We believe we have devised a model that will withstand the legal challenges that the industry will almost certainly bring. And I can attest to the political popularity of this effort – well over 95% of the comments we received were in support.

The second way is to scale to different sources of waste. We believe this is the first time that producer responsibility principles have been used to address solid waste products that don't have toxicity issues. By law, all paper in Seattle must be recycled, but even then, this recycling of yellow pages costs the city and its ratepayers about \$350,000 per year. The yellow page industry profits by shifting these disposal costs to the public and our recovery fee puts that cost back on the Yellow Pages publishers. This dynamic is not unique to the yellow page industry, and we need to identify the other areas where product life-cycle costs are being egregiously born by the public.

Now some specifics on what our ordinance does. For those of you who haven't been following, the legislation does three things:

1. Requires yellow pages distributors to obtain a city business license and file annual reports on the number and tonnage of yellow pages distributed in the city (distributor is defined as those who publish and arrange for the distribution of more than 4 tons of unsolicited yellow pages phone books annually).
2. Creates a City of Seattle "opt-out" site. Licensed publishers are required to download the names from this list 30 days prior to delivery and are not allowed to deliver to those on the list.
3. Places a recovery fee of 14 cents/book on all yellow pages phone books distributed to cover the cost of administering the opt-out system and \$148/ton to cover the cost of recycling.

The effort was fueled by local zero waste advocates who asked for help eliminating waste from unwanted yellow pages phone books. This was followed by the City Council establishing phone books as one of our “zero waste” priority products for 2010-2011.



When Dex began its delivery cycle this summer, I received a set of directories despite having opted-out earlier in the year, and one of my aides received a Verizon Superpages book by simply moving to a new address in the same week. In response, I posted an informal request for unwanted yellow pages books on my blog. Soon my office was crammed full of books. This was a photo opportunity and story that the press jumped at. Over the summer the issue was featured on all four local tv stations, the news paper, and a couple radio news programs. As the public response poured in, it was almost universal support.

As we drafted legislation, the Council looked at many options – both opt in and opt out – before settling on an opt-out system that really “works.” For us, a functional opt-out system would both collect the preferences of as many people as possible, and would “work” on the back end, meaning if you opted out, you wouldn’t receive a yellow pages book.

Part of the challenge in either system is participation. Many people simply won’t take the time to enroll in either an opt-in or opt-out system, making it difficult to capture actual preferences. So, as the City of Seattle launches its opt-out list next spring, we’ll be working hard to communicate with and educate our residents and customers, making it easy to access the list and specify their preferences. In addition to a user-friendly website, this means providing information in utility bills, via pre-paid postcards and educational pieces in language-specific newspapers and media.

We are hoping to create a system here in Seattle that other cities can model. We’d love to hear about how other jurisdictions are managing yellow pages phone books and how we might coordinate a national effort to bring



this to scale.

EXHIBIT C

TUESDAY, OCTOBER 5, 2010

CITY Non-Profits, Business Groups Oppose Yellow Pages Opt-Out Bill

posted by RIYA BHATTACHARJEE on TUE, OCT 5, 2010 at 3:20 PM

The Seattle City Council yesterday voted 5-4 to delay voting on the yellow pages opt-out **bill** by a week to address concerns from business organizations. Council Members Mike O'Brien, Tim Burgess, Richard Conlin, and Nick Licata voted against the delay.

Under O'Brien's proposed legislation, there would be a city-run opt-out registry that would prohibit yellow pages publishers from delivering those big, bulky books to people on the opt-out list. The city would fine publishers up to \$125 for violating the law. Publishers would also be charged a recovery fee to cover recycling costs.

Yellow pages companies have **opposed** O'Brien's proposal, calling it an attack on commercial free speech. They were joined today by a new group of opponents—including non-profits and the Greater Seattle Business Association—who worry that the ordinance might be too broad and unfairly penalize them for publishing business and city guides for the public. But O'Brien told the group that they would be **exempt from the recovery fee and opt-out requirements** because of an amendment which excuses organizations that distribute business and advertising guides to people who want them. They would however, still have to pay the \$100 licencing fee required of phone book publishers and report distribution numbers to the city.

However, Council Member Sally Bagshaw requested that voting be delayed by a week to vet out certain definitions in the ordinance such as "publisher" and "display advertising," which she called overly broad. Bagshaw wasn't the only one who had a problem with the draft ordinance. Council Member Jean Godden, a former journalist, said "it was a shame we cannot avoid conflict between our desire to **practice recycling and First Amendment rights.**"

"Today, it's the Yellow Pages," Godden continued. "Tomorrow what might be done to other media—*Little Nickel*, *The Stranger*, and maybe even *The Seattle Times*?"

Yellow Pages Association President Neg Norton told the council that he was disappointed that their efforts to work with the city on a clear and concise **YPA-administered** opt-out system had failed. Dex spokesperson Maggie Stonecipher warned that although Dex would work with the city to implement the bill, they would also explore legal action to challenge it.

EXHIBIT D

After Tweaks for Local Interests, City Council Set to Pass Yellow Pages Bill

posted by RIYA BHATTACHARJEE on MON, OCT 11, 2010 at 12:20 PM

The Seattle City Council is set to vote on the yellow pages phone book **ordinance** today at 2:00 p.m.—after making modifications from the **latest** version.

Generally, the bill would prohibit phone book publishers from distributing yellow pages to people on a city-run opt-out list and fine those found flouting the law.

The council was initially scheduled to vote on the bill last Monday, but **postponed** it by a week because of some concerns raised by city council member Sally Bagshaw that the ordinance would affect business groups and non-profits. The Greater Seattle Business Association, which distributes a small phone book of gay-run and gay-friendly businesses, and the West Seattle Chamber, which publishes the West Seattle Community Resources Guide, told the council last Monday that they were afraid the ordinance could penalize them.

In the new draft of the bill, the council is attempting to assuage those groups. The bill Would exempt organizations that distribute directories *to their membership*. Bagshaw's staff told *The Stranger* today that she had worked with council member and bill sponsor Mike O'Brien last week to address her concerns and was ready to vote for the ordinance. The amended ordinance focuses the regulation on those distributors (rather than publishers) that are generating the **largest amount of unwanted material** in the waste stream. The amendments also specifically exempt organizations that distribute phone books to people who request a book, or who distribute **less than 4 tons of paper** annually.

Both Bagshaw and O'Brien are currently in committee meetings and couldn't be reached for comment. Although O'Brien has Bagshaw's support now, he still faces the **wrath** of the Yellow Pages lobbyists who vehemently oppose the bill.

EXHIBIT E

O'Brien, Mike

From: Mona Smith [mona@smith-law.net]
Sent: Saturday, October 02, 2010 5:31 PM
To: O'Brien, Mike
Cc: Clark, Sally; Bagshaw, Sally; Rasmussen, Tom; Licata, Nick; Conlin, Richard; Godden, Jean; Harrell, Bruce; Burgess, Tim; Holmes, Peter
Subject: RE: Yellow Pages Ordinance

Hi Mike,

Per our conversation today, I am sending you some new revisions to the yellow pages ordinance. Whether or not you remove the ordinance from Monday's City Council meeting's agenda, we want to work with you to find a solution. Hopefully, together we can agree upon language that works for both the City and the GSBA and the many other nonprofit organizations or schools who may suddenly be defined as "publishers" and their publications as "yellow pages phone books."

As you know, we believe that the current definitions of SMC 6.255.025 are overly broad and overly inclusive. As a result, the ordinance affects more entities and publications than you intend. For example, given the sweeping definition of "yellow pages phone book" it probably encompasses the GSBA Guide and Directory as well as the GSBA Seattle Out and About publication (a one page fold-out that contains the names, addresses, phone numbers, company logos and descriptions of each listed establishment). GSBA developed the Out and About publication as part of our tourist initiative, which is in part supported by City grants, and it is distributed to hotels, restaurants, and other business establishments. Other organizations also have publications that highlight their members and are available to members and the public alike. Although the GSBA publications are far different than traditional yellow pages phone books, one of the key elements that distinguishes our publications is that they are requested opposed to not requested. Any City resident or business who receives a GSBA Guide requests and/or accepts it. GSBA does not leave its Guide on the door step of every City residence or business. Because they are requested opposed to not requested, the resident or business is the responsible party for the collection and recycling costs of these types of publications.

Also, GSBA is most likely unable to accurately determine and report the number of Guides or other publications distributed to City residents and business, as some of our members are outside of Seattle; we distribute thousands of Guides during Pride weekend and large numbers of the people who attend Pride festivities are from outside of Seattle; our Guides and publications that are distributed through businesses are picked up by both residents and non-residents of Seattle. Similarly, it would be difficult if not impossible to accurately determine and report the weight of distributed Guides and other publications in the City.

Below and attached are revisions we would like you to consider. The revisions are in the definition section, SMC 6.255.025 and include a new definition for "distribution" and "distributed", which we believe are instructive as to the intent of the ordinance. Our revisions focus on the intents of the ordinance, which are to provide an opt out registry for residents and business who do not want to receive traditional yellow pages phone books and for the recovery of collection and recycling costs for traditional yellow pages phone books. If you accept these revisions, there may be a need to revise some of the changes you made to Section 3 of SMC 6.255.150 (Severability – which by the way does not have a section 1).

- A. "Publisher" means a person or entity engaged in the business of publishing and arranging for the distribution of yellow pages phone books in the City to residents and businesses who do not request the yellow pages phone books. The term "publisher" is not intended to include an organization whose distribution of "yellow pages phone books" is to its members or to others who affirmatively request and/or accept delivery of "yellow pages phone books"

within the City or to those individuals whose role in the distribution of yellow pages phone books in the City is limited to driving the streets and making physical delivery of the yellow pages phone books; rather the term is intended to cover those persons who are primarily responsible for arranging for the publication and distribution of the yellow pages phone books and whose income is derived, at least in part, from the advertising contained in the yellow pages phone books. For example, membership organizations such as a chamber of commerce, business association or public school is not a publisher if the recipients of its publication are members or otherwise request and/or accept the publication.

- B. "Yellow pages phone book" means a publication that includes a listing of business names and telephone numbers and contains display advertising for at least some of those businesses (commonly, but not necessarily, printed on yellow paper), and which is distributed to City residents and businesses who have not requested it. For example, the publications of a membership organization such as a chamber of commerce, business association or public school are not "yellow pages phone books" if the recipients of the publication are members or otherwise request and/or accept the publication.
- C. "Display advertising" means business advertising that includes text and/or various graphic elements exceeding the use of bold face type and color highlighting of the business name and telephone number.
- D. "Distribution" or "distributed" means a publisher's delivery of yellow pages phone books to City residents and/or businesses who do not request the "yellow pages phone book." The definition of "distribution" or "distributed" is not intended to include those publications delivered to members by membership organizations or to others who request and/or accept delivery of the publications.

I am available by cell phone this weekend and should be in my office on Monday prior to attending the City Council meeting.

Thank you,

Mona Smith

Mona Smith | President | Greater Seattle Business Association
400 E. Pine Street, Suite 322 | Seattle, WA 98122 | GSBA Office 206.363.9188

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1629 Queen Anne Avenue N., Suite 103 | Seattle, Washington 98109
Office 206.285.1687 | Fax 206.284.0104 | Cell 425.246.3191
Email mona@smith-law.net | www.smith-law.net

From: O'Brien, Mike [<mailto:Mike.O'Brien@seattle.gov>]
Sent: Friday, October 01, 2010 1:07 PM
To: 'mona@smith-law.net'; 'louise@thegsba.org'
Cc: Handy, Esther
Subject: Yellow pages final ord.

Hi Mona and Louise-

Attached is the latest (and hopefully last) version of the ordinance. I know it doesn't address all of your concerns completely, but I am confident that it will meet the most serious of your concerns. Let me know if you have any more thoughts, and I look forward to seeing you on Monday.

Thanks, Mike

Councilmember Mike O'Brien
Seattle City Council
Po Box 34025
Seattle, WA 98124-4025

Tel: (206) 684-8800
Fax: (206) 684-8587
TTY: (206) 233-0025

<http://www.seattle.gov/council/obrien/>
Blog: <http://obrien.seattle.gov/>

To receive bi-weekly updates, go to <http://tinyurl.com/councilmemberMOB> to sign up for my mailing list.

EXHIBIT F

Mike O'Brien/SF
 Yellow Pages Ord.
 September 27, 2010
 Version 8

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SMC 6.255.035 License – Required, Exceptions.

Local exchange companies whose publication and distribution of phone books in the City is limited to only those phone books required by WAC 480-120-251 are not subject to the requirements of this chapter.

Local business organizations such as Chambers of Commerce and other business-promoting membership organizations which publish lists of their members including phone numbers and display advertising and which may be distributed directly to the customers of those businesses or by mail in a limited geographic area of less than ten percent (10%) of the City's population are not subject to the requirements of this chapter; except that such organizations shall be deemed yellow pages publishers when the sole activity or purpose of the organization is the publication and distribution of business phone number lists and display advertising bound in book or pamphlet form.

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SMC 6.255.040 License – Expiration Date.

Yellow pages phone book publisher licenses expire annually on March 31st.

SMC 6.255.050 License – Application.

Application for the yellow pages phone book publisher license shall be on forms specified by the Director, and shall be accompanied by the license fee established by section 6.255.060, the annual report form required by section 6.255.080, and any recovery fees required by section 6.255.100.

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Form Last Revised on May 14, 2010

4

EXHIBIT G

O'Brien, Mike

From: Mona Smith [mona@smith-law.net]
Sent: Monday, October 04, 2010 6:09 PM
To: Rasmussen, Tom; 'Louise Chernin'; LEG_CouncilMembers; Holmes, Peter; 'Patricia Mullen'
Subject: RE: Yellow Pages Ordinance

Tom,

Thank you starting this process so quickly after today's City Council meeting. I had drafted a proposed definition of "distribution or distributed" that may help administratively exempt most of the publications published by membership and other organizations. We welcome discussion among the various stakeholders to craft language that will effectively meet the intent of the ordinance and withstand constitutional scrutiny. Below please find my proposed language. The "not intended" portion of the definition could be drafted as an example, which should couch it as more illustrative of the intent of the provision.

D. "Distribution" or "distributed" means a publisher's delivery of yellow pages phone books to City residents and/or businesses who do not request the yellow pages phone book. The definition of "distribution" or "distributed" is not intended to include those publications delivered to members by membership organizations or to others who request and/or accept delivery of the publications.

If this language or some variation is acceptable, the Council may not need to revise the other definitions contained in SMC 6.255.025. My preference, however, it to be as clear as possible to have the plain language match the intent of the provision.

We look forward to working with all of you to find solutions.

Thank you,

Mona Smith

Mona Smith | President | Greater Seattle Business Association
400 E. Pine Street, Suite 322 | Seattle, WA 98122 | GSBA Office 206.363.9188

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1629 Queen Anne Avenue N., Suite 103 | Seattle, Washington 98109
Office 206.285.1687 | Fax 206.284.0104 | Cell 425.246.3191
Email mona@smith-law.net | www.smith-law.net

From: Rasmussen, Tom [mailto:Tom.Rasmussen@seattle.gov]
Sent: Monday, October 04, 2010 5:49 PM
To: 'Mona Smith'; 'Louise Chernin'; LEG_CouncilMembers; Holmes, Peter; 'Patricia Mullen'
Subject: RE: Yellow Pages Ordinance

Councilmember O'Brien and Peter Holmes:

I would like to request that the City Attorney develop an amendment to the phone book legislation which would define who would be excluded from coverage based upon the method of distribution.

It would seem that if under the current draft legislation a department director could administratively exempt certain types of businesses from compliance the Council legislatively could also create exemptions based upon how the books are distributed.

My goal would be to support the intention of the legislation which most who testified supported but not require some businesses to go through the administrative exemption process that is in the current draft.

Thanks very much.

Tom Rasmussen
Seattle City Councilmember
206-684-8808

Are you interested in keeping up to date on what's happening at City Hall? Stay informed about current issues facing Seattle residents with Councilmember Rasmussen's e-newsletter "Point of View,"
<http://www.mailermailer.com/x?oid=19893t> >Previous editions can be viewed at
http://www.seattle.gov/council/Rasmussen/news_past.htm

Also, you can find me on facebook @ <http://www.facebook.com/TomMRasmussen>

From: Mona Smith [mailto:mona@smith-law.net]
Sent: Monday, October 04, 2010 12:06 PM
To: Clark, Sally; Bagshaw, Sally; Rasmussen, Tom; Licata, Nick; Conlin, Richard; Godden, Jean; Harrell, Bruce; Burgess, Tim; Holmes, Peter; O'Brien, Mike
Cc: 'Louise Chernin'
Subject: Yellow Pages Ordinance

Dear City Council Members,

GSBA intends to testify against the "Yellow Pages Phone Book" ordinance at this afternoon's City Council meeting.

This ordinance as written will threaten the financial well being of the GSBA. For non-profits who generate revenue from member-based publications, this ordinance will create hardship in a time when non-profits are already struggling to maintain operating revenue. Chambers of commerce and business associations have business directories and other publications that promote the economic health of our region. In fact, the City provides grants for chamber tourism initiatives. GSBA has received 2 grants and with the money has produced the Seattle Out and About tourism publication.

In addition, the cost for the City to administer the exemption portion of its program is likely to exceed the revenue anticipated from nonprofit organizations' registration fees. Certainly, the cost to defend the highly anticipated lawsuit by yellow pages publishers will cost more than the City would collect with its newly created fees next year.

In the interest of having a well thought out piece of legislation, removing the ordinance from today's motion calendar is to everyone's benefit. The City needs to find a simple solution and the ordinance has unintended consequences and negatively impacts nonprofit organizations throughout the City and region. GSBA and other business organizations will work off line with the City Council to create a well intentioned and cost effective ordinance.

Thank you,

Mona Smith

Mona Smith | President | Greater Seattle Business Association
400 E. Pine Street, Suite 322 | Seattle, WA 98122 | GSBA Office 206.363.9188

MONA SMITH PLLC | Attorneys at Law
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Email mona@smith-law.net | www.smith-law.net

EXHIBIT H

Fathi, Sahar

From: Lilly, Dick
Sent: Thursday, October 07, 2010 10:38 AM
To: Fathi, Sahar
Subject: FW: Tonnage cut off for exemption to phone books ordinance

Importance: High

Follow Up Flag: Follow up
Flag Status: Completed

Sahar,
Ooops. Forgot to include you on the list first time.
Sorry,
Dick

From: Lilly, Dick
Sent: Thursday, October 07, 2010 10:34 AM
To: Handy, Esther; Moorehead, Meg; Foster, William
Cc: Croll, Timothy
Subject: Tonnage cut off for exemption to phone books ordinance
Importance: High

Folks,
Guy Generaux of Journal Media Group which publishes nine community Chamber of Commerce business directories in King and Snohomish counties including the ones in Seattle (It appears to be all of them, though not GSBA), says the largest, Ballard at 80 pages this year, weighs 4.3 ounces and 12,000 were printed for a total of 3,225 pounds likely to be recycled in Seattle. That is 1.6125 tons. To allow for growth, Mr. Generaux suggested a cutoff point of 5 tons. I'd say 4 or 5 tons, your choice, under which a publisher would not be subject to regulation under this ordinance. You may want to check with GSBA before finalizing the number but I have no doubt they will be under either 4 or 5 tons. Because each individual Chamber contracts with Journal Media for printing of the books, the Chambers would be considered the publishers for the purposes of the ordinance.

Thanks,
Dick

Dick Lilly
Seattle Public Utilities Solid Waste Division
Business Area Manager for Waste Prevention and Product Stewardship
206.615.0706
dick.lilly@seattle.gov
www.seattle.gov/util
Office: 700 5th Ave. Suite 5935B
Mail: P.O. Box 34018
Seattle, WA 98124-4018

EXHIBIT I

Fathi, Sahar

From: Fathi, Sahar
Sent: Monday, November 29, 2010 4:33 PM
To: 'conversation4@kuow.org'
Cc: Hansen, Sierra
Subject: RE: Thanks for working on the phone book story

Bryan,

No external contractors were used to get data on phone book use. Resident feedback via general anecdotes during the legislation development process was the extent of our information.

Sahar Fathi
Office of Councilmember Mike O'Brien
Main: (206) 684-8800
Direct: (206) 233-2788
Sahar.Fathi@Seattle.Gov

From: Bryan Buckalew [<mailto:conversation4@kuow.org>]
Sent: Monday, November 29, 2010 3:58 PM
To: Hansen, Sierra
Subject: RE: Thanks for working on the phone book story

Hi Sierra,

Hate to bug you again, but I was wondering if Seattle used any outside contractors to get some numbers on the viability of phone books? (Who uses them? Are those numbers growing or falling? Etc.) YPA gave me some figures, but I was wondering if you guys used a different source. Thanks for your help!

Bryan Buckalew

From: Hansen, Sierra [<mailto:Sierra.Hansen@seattle.gov>]
Sent: Friday, November 19, 2010 3:33 PM
To: Bryan Buckalew
Subject: Thanks for working on the phone book story

Hey Bryan,

Thanks for coming in today to meet with Mike. If you think about it, I would love a heads up when the story airs.

Have a great weekend.

Sierra Hansen, Legislative Assistant
Office of Councilmember Mike O'Brien
Seattle City Council

Tel: (206) 684-8800
Fax: (206) 684-8587

EXHIBIT J

**Yellow Pages Phone Books and Junk Mail
Options for Waste Reduction
Discussion
Seattle City Council SPU and Neighborhoods Committee
June 22, 2010**

Introduction to the issue

Junk mail accounts for nearly 100 pounds of paper disposed or recycled per household per year. (USPS Household Survey 2008) Another source (41pounds.org) calculates 41 pounds per U.S. adult per year. Phone books add an additional five pounds per person, according to the Minnesota Pollution Control Agency. Other sources, including CatalogChoice, estimate yellow pages at 12-13 pounds per household per year.

Thus at a total of 110 pounds per household, Seattle's approximately 275,000 households generate 15,125 tons of paper from junk mail and phone books. The cost to ratepayers, if all were recycled at a net \$140/ton, is \$2,117,500 or almost \$8 per household.

That cost and the life-cycle environmental impact of paper production can be reduced by cutting the amount of junk mail sent and the number of unwanted phone books delivered.

Junk mail and unwanted extra yellow pages phone books are an irritant to many residents. Many seek ways to opt-out of junk mail and phone book delivery that would be convenient, inexpensive and effective.

A number of strategies to reduce this waste are available to City policymakers.

Options

1. Do nothing. That is, let publicity from environmental organizations and market forces continue to pressure the industries.

- Advantages: No cost.
- Disadvantages: Will not add to waste prevention.

2. Promote all opt-out services. Jointly with King County, promote without preference privately operated web-based opt-out registries for junk mail, catalogs and yellow pages phone books.

- DMAChoice.org – sponsored by the Direct Marketing Association. Free to users. Does not include phone books.
- Ecologicalmail.org – for businesses that want to get former employees off junk mail lists. Sponsored by the National Waste Prevention Coalition's Junk Mail Reduction Project, it's free to businesses. The website is hosted by King County.
- CatalogChoice.org – Free non-profit provides portal to all mailers plus phone books.
- Optoutprescreen.com – a free service of the credit rating agencies, this will cut off some credit card and insurance offers for five years.

- 41Pounds.org – Cost is \$41, though \$15 is remitted to a charity customers pick from a limited list.
- Privacycouncil.org – Cost is \$9.
- Myjunktree.com – Cost is \$20.
- Stopthejunkmail.com – Cost is \$19.95.
- Yellowpagesoptout.com – Free. Operated by the yellow pages publishers industry association. Works with all major publishers.
 - Advantages: Would nominally increase diversion
 - Disadvantages: Cost: \$12,000 for regular appearance in Curb Waste and creation of links from City web pages to the private sites. King County's cost would be separate and additional.

3. Promote only free opt-out services. Jointly with King County, promote only the free privately operated opt-out services.

- DMAChoice.org – sponsored by the Direct Marketing Association. Free to users. Does not include phone books.
- CatalogChoice.org – Free non-profit provides portal to all mailers plus phone books.
- Ecologicalmail.org – for businesses that want to get former employees off junk mail lists. Sponsored by the National Waste Prevention Coalition's Junk Mail Reduction Project, it's free to businesses. The website is hosted by King County.
- Yellowpagesoptout.com – Free. Operated by the yellow pages publishers industry association.

Advantages:

- Directs residents to free sites with effective service, saves them time compared to searching the Internet.
- Service equal to or better than pay-for-service sites.
- CatalogChoice services same as option 4. Identity protected records; will act as consumer advocate.
- No cost other than publicity.
- City not part of the consumer transaction.
- Likely increased diversion.

Disadvantages:

- Cost: \$10,500 for regular appearance (3 issues per year) in Curb Waste and creation of links to the free sites. King County's cost would be separate and additional.
- No data available to City or King County.

4. Contract with CatalogChoice for enhanced opt-out services. Enter into a contract with CatalogChoice. The non-profit would develop a link from City and County web site directly to CatalogChoice website. Seattle and King County residents (and others) would then be routed directly to the CatalogChoice website for their opt-out searches covering phone books, catalogs and junk mail. In addition, this option could require, via ordinance, that yellow pages publishers honor customer's opt-out designations. (The City Attorney's Office is looking at the City's legal authority in this area and will report later this month.)

Advantages:

- Easy to publicize link from local government websites.
- CatalogChoice would provide data on opt-outs showing waste tonnage avoided. These data are not otherwise available.
- Largest number of collaborating mailers/distributors, about double the number of DMA participants.
- Shorter processing times.
- Only service that includes phone books.
- One-stop shopping for City and County residents.
- Identity-protected records; will advocate in disputes with companies.

Disadvantages:

- Cost: \$10,000 one-time set up; \$10,000 per year operation charge; \$10,500 per year for publicity in 3 issues of Curb Waste and Conserve. Total annual operating cost = \$20,500 after \$10,000 set up cost. Grand total for 2011 startup: \$30,500. (King County costs separate.)

5. Require by ordinance that yellow pages offer opt-out service. For yellow pages phone books only, pass legislation requiring yellow pages publishers to provide opt-out service for customers. (Cannot regulate items – catalogs and junk mail – delivered by USPS.) Ordinance would require phone book publishers to honor opt-out requests from customers or face City penalties and would require prominent advertising on the yellow page books of the availability of the opt-out service. (The City Attorney's Office is looking at the City's legal authority in this area and will report later this month.)

Advantages:

- Could fine companies who deliver contrary to customer request.

Disadvantages:

- Companies already offer opt-out service voluntarily though delivery errors limit effectiveness and promotion is limited.
- Makes City mediator in customer-company disputes.
- Only covers phone books.
- Enforcement would require new revenue.

6. Require by ordinance that yellow pages be distributed solely on an opt-in basis. For yellow pages only, pass city legislation prohibiting delivery of yellow pages except when requested by customers. (Cannot regulate items delivered by USPS.) Ordinance would require phone book publishers to restrict delivery to opt-in requests from customers or face City penalties. (The law department is looking at the City's legal authority in this area and will report later this month.)

Advantages:

- Reduction in deliveries, significantly less waste.
- Less recycling/disposal cost on Seattle ratepayers.
- Preferred by some community activists.

Disadvantages:

- Makes City mediator in customer-company disputes.

- Enforcement would require new revenue.
- Only covers phone books.
- May attract legal challenges.

7. Impose an advanced recovery fee (ARF) charged per yellow pages phone book for delivery. (Yellow pages only. White pages delivery is regulated by W.U.T.C. as a required phone company service.) The City would impose a fee, likely between 25 and 50 cents per book, to be paid by publishers for each yellow pages book distributed in Seattle. (At two books and 10 pounds per household, 550,000 books are distributed generating 1,375 tons of recyclable paper, which recycled at \$140 net/ton results in a cost to ratepayers of \$192,500 or 35 cents per yellow pages phone book.) (City Attorney's Office expects to affirm City authority in this area later this month.)

Advantages:

- Takes product stewardship approach.
- Savings to Seattle ratepayers.
- Cost of recycling borne by producer

Disadvantages:

- Administrative cost for collection of ARF.
- May not suppress waste generation as effectively as opt-in or opt out.

7A. Use an advanced recovery fee in combination with any of the other options.

8. Preferred alternative: Option number 4, a contractual arrangement with CatalogChoice to provide convenient consumer service from both Seattle and King County web sites with annual reporting of the estimated tonnage of junk mail, catalogs and phone books that does not enter the City's solid waste collection system.

EXHIBIT K

Mike O'Brien/SF
~~Yellow Pages Ord.~~
 July 27, 2010
 Version 1

ORDINANCE _____

AN ORDINANCE relating to solid waste reduction; establishing license requirements for ~~publishers of yellow pages phone books~~; establishing an advanced recovery fee for ~~yellow pages phone books~~, and amending the Seattle Municipal Code by creating a new Chapter 6.255.

~~Deleted: distributors~~

~~Deleted: phone book~~

~~Deleted: phone book~~

WHEREAS, the Washington State Legislature in RCW 70.95.010(8)(a) established waste reduction as the first priority for the collection, handling, and management of solid waste; and

WHEREAS, the Washington State Legislature in RCW 70.95.010(4) found that it is "necessary to change manufacturing and purchasing practices and waste generation behaviors to reduce the amount of waste that becomes a governmental responsibility"; and

WHEREAS, the Washington State Legislature in RCW 70.95.010(6)(c) found that it is the responsibility of city governments "to assume primary responsibility for solid waste management and to develop and implement aggressive and effective waste reduction and source separation strategies"; and

WHEREAS, in 2007 the City Council adopted, the Mayor concurring, Resolution 30990, which reaffirmed the City's 60% recycling goal and set a longer-term goal of 70% recycling along with targets for waste reduction; and

WHEREAS, Resolution 30990 called for studies on how to reduce Seattleites' use of hard-to-recycle materials; and

WHEREAS, costs associated with the collection and disposal of ~~yellow pages phone books~~ in Seattle creates burdens on the City's solid waste disposal system; and

~~Deleted: phone book~~

WHEREAS, to discourage and decrease the unwanted distribution of ~~yellow pages phone books~~ in the city, it is necessary to regulate such use and distribution; and

~~Deleted: phone book~~

WHEREAS, it is in the best interest of the health, safety and welfare of the people that regulation include the imposition of a fee to discourage the distribution of ~~unwanted yellow pages phone books~~, to recover the cost of recycling and disposal by the City, to protect the environment, and to recover the costs of regulation; NOW, THEREFORE,

~~Deleted: use and~~

~~Deleted: disposable phone book~~

~~Deleted: duce~~

~~Deleted: solid waste~~

~~Deleted: city~~

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Form Last Revised on May 14, 2010

1

EXHIBIT L

Lilly, Dick

From: Bagby, Jenny
Sent: Thursday, December 02, 2010 12:58 PM
To: Lilly, Dick
Subject: RE: Paragraph?
Attachments: Recycle Comp data through October 2010.pdf

Here you go.

Dick,

Attached is a table that shows the results from the Residential Curbside and Apartment Recycling program composition study. This study uses the same methodology as the 2005 study that we have published. The table I am attaching from the 2010 study are the raw results for the sampling done in January through October. These are not the final results, but just interim raw results. When we publish the final data, it will include all 12 months worth of sampling and will also be weighted to properly represent the underlying population that this sample is representing. The final results will vary from what is attached but I don't believe the results will be strikingly different from what is attached.

The results show that phone books collected in the residential curbside and apartment recycling program represent about 1.95% of the total collected. We project that for 2010 we will collect about 76,000 tons of recyclables so phone books would be about 1,482 tons using the 1.95% estimate. (Remember again that the 1.95% is raw (unweighted) and preliminary (only 10 months worth of data).

Thanks
Jenny

From: Lilly, Dick
Sent: Thursday, December 02, 2010 11:11 AM
To: Bagby, Jenny
Subject: Paragraph?

Thanks,
Dick

Unweighted Composition Analysis by 2010 Subclasses

StudyPeriod: 2010

Calculated at 90% confidence interval

	Mean	Low	High		Mean	Low	High
Paper	67.40%			Non-Recyclables	5.99%		
Newsprint	17.91%	17.08%	18.73%	Non-Conforming Paper	0.83%	0.74%	0.92%
OCC/Kraft, Unwaxed	18.04%	16.81%	19.28%	Non-Conforming Metal	0.45%	0.35%	0.56%
Phone Books	1.95%	1.60%	2.30%	Non-Conforming Plastic	1.64%	1.39%	1.88%
Mixed Low-grade	28.76%	27.89%	29.62%	Non-Conforming Glass	0.32%	0.19%	0.45%
Polycoat Containers	0.59%	0.55%	0.63%	Other non-recyclables	2.75%	2.30%	3.20%
Aseptic Containers	0.06%	0.05%	0.08%	Contaminants	0.52%		
Shredded Paper	0.07%	0.01%	0.14%	Non-recyclables: food/gree	0.41%	0.19%	0.62%
Mixed Paper Packaging	0.01%	0.00%	0.03%	Non-recyclables: textiles an	0.12%	0.07%	0.16%
Metal	2.67%						
Aluminum Cans	0.78%	0.73%	0.84%				
Tin Food Cans	1.25%	1.07%	1.43%				
Other Ferrous	0.47%	0.30%	0.65%				
Aluminum Foil/Containers	0.17%	0.15%	0.19%				
Plastic	4.25%						
Small PET Bottles (24 oz or	0.77%	0.73%	0.81%				
Large PET Bottles (greater	0.87%	0.82%	0.91%				
PET Jars, Tubs, and Other	0.39%	0.37%	0.42%				
HDPE Bottles	1.02%	0.96%	1.08%				
HDPE Jars, Tubs, and Othe	0.11%	0.08%	0.14%				
Other Plastic Bottles (#3-7)	0.10%	0.08%	0.12%				
Other Jars, Tubs, and Cont	0.48%	0.44%	0.51%				
Plastic Bags and Packagin	0.45%	0.40%	0.51%				
Solo Cups #1	0.01%	0.00%	0.01%				
Single-use and Semi-Dur F	0.00%	0.00%	0.01%				
Bubble wrap and other over	0.04%	0.03%	0.06%				
Other Non-Take Out Cups (0.01%	0.00%	0.03%				
Glass	19.17%						
Clear Bottles	2.88%	2.64%	3.12%				
Green Bottles	4.98%	4.63%	5.34%				
Brown Bottles	3.76%	3.43%	4.09%				
Clear Container Glass	1.05%	0.94%	1.16%				
Other Glass Containers and	0.25%	0.20%	0.30%				
Mixed Cullet	6.24%	5.53%	6.95%				

Sample Count: 225

Page 1 of 1

EXHIBIT M

Seattle Public Utilities

2005
Residential Recycling Composition Study
Final Report

prepared by

Cascadia Consulting Group, Inc.

in cooperation with

Seattle Public Utilities Staff

June 2006



printed on recycled paper

Table of Contents

1	OVERVIEW	1
1.1	Introduction	1
1.2	Sampling Populations	1
2	SUMMARY OF SAMPLING RESULTS	3
3	SUMMARY OF RESULTS COMPARED TO PREVIOUS STUDIES	6
3.1	Trends in Recycling	6
3.2	Changes in Recycling: 2000/01 to 2005	7
4	COMPOSITION RESULTS, BY SUBPOPULATION	8
4.1	By Service Area	9
4.1.1	North	10
4.1.2	South	10
4.1.3	Comparison between Service Areas	11
4.2	By Generator Type	13
4.2.1	Single-family Composition	14
4.2.2	Multifamily Composition	14
4.2.3	Comparison between Generator Types	15
4.3	By Generator Type and Service Area	17
4.3.1	Single-family North	18
4.3.2	Single-family South	18
4.3.3	Multifamily North	19
4.3.4	Multifamily South	19
4.3.5	Comparison between Subpopulations	20
	Appendix A Recycling Component Categories	
	Appendix B Sampling Methodology	
	Appendix C Comments on Monthly Sampling Events	
	Appendix D Recycling Composition Calculations	
	Appendix E Year to Year Comparison Calculations	
	Appendix F Field Forms	

Table of Tables

Table 2-1. Top Ten Components: Overall.....	4
Table 2-2. Composition by Weight: Overall	5
Table 3-1. Changes in Recycling: 1998/99 to 2005	7
Table 4-1. Description of Samples for each Subpopulation	8
Table 4-2. Top Ten Components: North	10
Table 4-3. Top Ten Components: South.....	10
Table 4-4. Composition by Weight: North	11
Table 4-5. Composition by Weight: South	12
Table 4-6. Top Ten Components: Single-family	14
Table 4-7. Top Ten Components: Multifamily	14
Table 4-8. Composition by Weight: Single-Family	15
Table 4-9. Composition by Weight: Multifamily	16
Table 4-10. Top Ten Components: Single-Family North	18
Table 4-11. Top Ten Components: Single-Family South	18
Table 4-12. Top Ten Components: Multifamily North	19
Table 4-13. Top Ten Components: Multifamily South.....	19
Table 4-14. Composition by Weight: Single-Family North	21
Table 4-15. Composition by Weight: Single-family South	22
Table 4-16. Composition by Weight: Multifamily North	23
Table 4-17. Composition by Weight: Multifamily South	24

Table of Figures

Figure 1-1. Subpopulation Definitions.....	2
Figure 2-1. Overview of Composition Estimates: Overall	4
Figure 3-1. Changes in Residential Recycling Tons, 2000/01 to 2005	7
Figure 4-1. Overview of Composition Estimates, by Service Area	9
Figure 4-2. Overview of Composition Estimates, by Generator Type	13
Figure 4-3. Overview of Composition Estimates, by Generator Type and Service Area	17

Table 2-2. Composition by Weight: Overall
(January 2005 – December 2005)

Calculated at a 90% confidence level

	Tons	Mean	Low	High
Paper	63,005	75.7%		
Newsprint	27,445	33.0%	32.1%	33.9%
OCC/Kraft, Unwaxed	13,107	15.8%	14.9%	16.6%
Phone Books	2,231	2.7%	2.2%	3.2%
Mixed Low-grade	19,901	23.9%	23.1%	24.8%
Polycoat Containers	289	0.3%	0.3%	0.4%
Aseptic Containers	33	0.0%	0.0%	0.0%
Metal	1,342	1.6%		
Aluminum Cans	419	0.5%	0.5%	0.6%
Tin Food Cans	675	0.8%	0.7%	0.9%
Other Ferrous	248	0.3%	0.2%	0.4%
Plastic	1,957	2.4%		
Small PET Bottles (24 oz or smaller)	351	0.4%	0.4%	0.5%
Large PET Bottles (greater than 24 oz)	426	0.5%	0.5%	0.5%
PET Jars, Tubs, and Other Containers	29	0.0%	0.0%	0.1%
HDPE Bottles	556	0.7%	0.6%	0.7%
HDPE Jars, Tubs, and Other Containers	88	0.1%	0.1%	0.1%
Other Plastic Bottles (#3-7, excluding #6)	66	0.1%	0.1%	0.1%
Other Jars, Tubs, and Containers (#3-7, excluding #6)	101	0.1%	0.1%	0.1%
Plastic Bags and Packaging	339	0.4%	0.4%	0.5%
Glass	13,216	15.9%		
Clear Bottles	2,746	3.3%	3.2%	3.4%
Green Bottles	4,870	5.9%	5.6%	6.1%
Brown Bottles	3,422	4.1%	3.9%	4.3%
Clear Container Glass	140	0.2%	0.1%	0.2%
Other Glass Containers and Bottles	72	0.1%	0.1%	0.1%
Mixed Cullet	1,967	2.4%	2.2%	2.5%
Recyclable Glass (Commingled Compartment)	1,904	2.3%		
Recyclable Glass (Commingled Compartment)	1,904	2.3%	1.8%	2.8%
Contaminants	1,774	2.1%		
Non-conforming Paper (Commingled Compartment)	475	0.6%	0.5%	0.7%
Non-conforming Metal (Commingled Compartment)	130	0.2%	0.1%	0.2%
Non-conforming Plastic (Commingled Compartment)	577	0.7%	0.6%	0.8%
Non-conforming Glass (Glass Compartment)	37	0.0%	0.0%	0.1%
Other Non-recyclables	554	0.7%	0.5%	0.8%
Total Tons	83,197			
Sample Count	266			

Appendix A RECYCLING COMPONENTS

For the 2005 study, a sample generally consisted of two parts, corresponding to two separate collection compartments within a truck: one for *glass* recyclables, and the other for *all other recyclables* (e.g. mixed paper, aluminum cans, and plastic bottles). A small number of trucks combined these materials in one compartment or mixed the materials accidentally. See Appendix B for more information.

Samples from *glass* compartments were sorted into eight of the 30 categories listed below: the seven *glass* components and *garbage (glass compartment)*. Samples from *all other recyclables* compartments were sorted into the remaining 22 categories. Detailed definitions of all component categories for the 2005 study are listed below and are followed by component changes between the 2000/01 and 2005 studies.

Paper

1. NEWSPRINT: Printed newsprint. (Advertising "slicks" (glossy paper) were included in this category if found mixed with newspaper; otherwise, ad slicks are included with mixed low grade paper.)
2. OCC/KRAFT, UNWAXED: Unwaxed/uncoated old corrugated container boxes and Kraft paper, and brown paper bags. Clean bags and boxes only; soiled are "non-conforming."
3. PHONE BOOKS: Telephone directories.
4. MIXED LOW GRADE: Mixed recyclable papers, including junk mail, magazines, colored papers, bleached Kraft, boxboard, mailing tubes, and paperback books. May also contain white or lightly colored sulfite/sulfate bond, copy papers, computer printouts, hard-back books, and envelopes.
5. POLYCOAT CONTAINERS: Bleached polycoated milk, ice cream, and frozen food containers. Clean containers only; soiled are "non-conforming."
6. ASEPTIC CONTAINERS: Juice, soy/rice milk, and soup broth containers. Clean containers only; soiled are "non-conforming."

Metal

7. ALUMINUM CANS: Aluminum beverage cans (UBC) and bi-metal cans made mostly of aluminum.
8. TIN FOOD CANS: Tinned steel food containers, including bi-metal cans mostly of steel.
9. OTHER FERROUS: Ferrous and alloyed ferrous scrap metals to which a magnet adheres and which are not significantly contaminated with other metals or materials.

Plastic

10. SMALL PET BOTTLES: Polyethylene terephthalate bottles (containers with a narrow neck), such as soda pop and other beverage less than or equal to 24 ounces.